

MAY 25 1987

NEW YORK TIMES

ARTICLE APPEARED
ON PAGE A1

A New Stand Over Contras

President's Assertions Contradict '85 Position

By STUART TAYLOR Jr.

Special to The New York Times

WASHINGTON, May 24 — President Reagan's recent assertions that a Congressional ban on aid to the Nicaragua rebels in 1985 did not apply to his National Security Council or national security adviser directly contradict detailed statements to Congress in 1985 on how the Administration was complying with the law.

A similar contradiction is raised by the White House position that the Congressional ban, the Boland Amendment, did not prohibit the Administration from encouraging other nations to finance and arm the rebels, known as the contras, when the Administration could not legally do so itself.

Conspiracy to Violate Law Seen

The contradictions are significant because they bear directly on whether Mr. Reagan himself may have been involved in an elaborate effort to violate the law. Some leading experts and Congressional aides argue that the Boland Amendment clearly covered the President's national security aides.

On the assumption that his aides were covered by the amendment even if the President was not, a few critics of Mr. Reagan have argued that he may have been involved in a conspiracy to

violate the law.

The three-week-old Congressional hearings on the Iran-contra affair have heard testimony suggesting that the National Security Council staff was directly involved in encouraging other countries to help the contras, apparently with Mr. Reagan's approval.

No member of the Congressional investigating committees has suggested that the evidence to date indicates that the President himself committed an impeachable offense. The focus of the hearings will soon turn to the Iran arms sales and related matters.

Lawrence E. Walsh, the special prosecutor investigating the Iran-contra affair, is known to be exploring the possibility that Reagan aides engaged in a criminal conspiracy to violate the Boland Amendment, which itself carried no penalties.

Law enforcement officials have said the President's role is an important subject of this investigation. Any theory that the President was culpable in a conspiracy, based on the current public record, would however depend on a chain of legal and factual inferences with several possibly weak links.

Wording of Amendment

The version of the Boland Amendment that was in effect from October 1984 until December 1986 said, "No funds available to the Central Intelligence Agency, the Department of Defense, or any agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual."

When news reports in 1985 prompted Congressional inquiries about whether the Administration was violating the amendment and seeking aid for the contras from allies, top officials assured Congress that the Administration would comply with the law.

Not only Robert C. McFarlane, then the national security adviser, but also Langhorne C. Motley, an Assistant Secretary of State who was the top spokesman on Central America at the time, said the entire Administration, including the National Security Council, would obey the Boland Amendment and that it barred soliciting or encouraging foreign money for the contras.

On March 26, 1985, Mr. Motley was asked in a Senate Foreign Relations Committee hearing on foreign aid about reports that the Administration might seek to finance the contras through private groups or friendly third nations.

He responded, "There is a prohibition against any U.S. assistance whether direct or indirect, which to us would infer also soliciting and/or encouraging third countries; and we have refrained from doing that because of the prohibition."

Pressed for further assurances that the Administration was not looking for "some loophole," such as financing the contras through friendly foreign na-

tions, Mr. Motley said:

"Nobody is trying to play games with you or any other member of Congress. That resolution stands, and it will continue to stand; and it says no direct or indirect. And that is pretty plain English; it does not have to be written by any bright young lawyers. And we are going to comply with that."

Until this month, after testimony accumulated concerning President Reagan's role in assisting the contras, Mr. Reagan and the White House never contradicted those 1985 assurances or suggested publicly that anyone in the Administration was not covered.

Evidence of Conspiracy

Some critics of the President, including Morton H. Halperin, head of the American Civil Liberties Union's Washington office, said the evidence suggested the President had violated his constitutional duty to "take care that the laws be faithfully executed." He said the evidence could support the inference that the President was involved in a conspiracy to violate the Boland Amendment.

A Harvard Law School professor, Laurence H. Tribe, said the President's conduct might amount to "an impeachable abuse of power."

One possible violation of the amendment is suggested by recent evidence showing that Mr. McFarlane had encouraged, and perhaps actively solicited, Saudi leaders to double their contribution to the contras from \$1 million to \$2 million a month.

Foreign Help Called Legal

Defenders of the President and some independent legal experts said that, nonetheless, there is support for the current White House position that it was legal, at least for the President, to seek help abroad for the contras.

But the same independent experts say a strong case can be made that the deep involvement of Lieut. Col. Oliver L. North, who was dismissed from the National Security Council staff, and the use of Government offices and services to obtain and dispense Saudi money to arm the contras violated the amendment.

117

5 of 29

When a dispute arises about the meaning of a law applicable to a Government agency, courts tend to give some deference to official agency interpretations that were communicated to Congress when the law was first put into effect, not to interpretations made after violations have been charged.

It was after details of the White House connection to the Saudis and the contras were revealed this month that Mr. Reagan said publicly for the first time of the Boland Amendment, "Well, my interpretation was that then that was not restrictive on the national security adviser or National Security Council."

'Not an Intelligence Operation'

In his statement, made in a May 14 interview with news magazines, he added: "I believe that the N.S.C. is not an intelligence operation. It's simply advisory to me. And there is nothing that has ever been in the Boland Amendment that could keep me from asking other people to help them," meaning the contras.

"The only restriction on me," the President added, "was that I couldn't approve the sending of help or arms myself out of our budget money."

Unlike the President, White House lawyers and the chief White House press spokesman, Marlin Fitzwater, have avoided taking a public position on whether the amendment applied to the National Security Council or staff.

Support in White House

Mr. Fitzwater has said, however, that, "I don't think we have ever felt it's against the law to solicit money from third countries."

White House lawyers are said to believe that the President was not directly covered by the Boland Amendment, that a strong case can be made that the national security adviser was not covered, and that it is far from clear that the National Security Council staff was covered.

Some defenders of the President stress that the amendment was a rider to appropriations legislation that did not relate to the National Security Council or its staff.

Other Reagan allies, like Representative Henry J. Hyde, Republican of Illinois, say that, as Mr. Hyde put it, "clearly the Boland Amendment was designed to bring to a screeching halt any aid to the contras," but that it was "inartfully drawn" and did not clearly apply to the National Security Council or to foreign solicitation.

But Larry L. Simms, a Washington lawyer who was one of the Justice Department's top career experts on intelligence-related issues until early 1985, dismissed such arguments.

"The applicability of the Boland Amendment to the N.S.C. depends on whether the N.S.C. was in fact engaged in 'intelligence activities' as that term was used by Congress," he said. "The argument that the N.S.C. was not doing so appears, based on the public record, to be absurd."

2/2

60129